

² OWCP issued decisions on January 15 and March 23, 2015 addressing different issues. Appellant has filed separate appeals from these decisions which will be considered by the Board under separate docket numbers.

FACTUAL HISTORY

On June 28, 2010 appellant, then a 55-year-old carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained low back and neck pain, trigger finger of the right thumb, and pain, strains, and spasms of the right arm, shoulder, hip, buttocks, and leg causally related to factors of his federal employment. OWCP accepted the claim for an aggravation of lumbar degenerative disc disease, right lumbar radiculitis, a temporary aggravation of right thumb arthritis, and a temporary aggravation of right thumb trigger finger.

The record contains numerous OWCP decisions and extensive medical evidence addressing various periods of disability. The Board will set forth the factual and medical evidence relevant to the issue of whether appellant was disabled from April 5 to 7, 2012 due to his accepted employment injury.

On April 4, 2012 Dr. Daniel T. Robertson, a Board-certified orthopedic surgeon, evaluated appellant for right thumb pain. He diagnosed right thumb carpometacarpal (CMC) arthritis and mild triggering. Dr. Robertson noted that appellant attributed his symptoms to grasping and pinching activities at work. He injected appellant's right thumb with a steroid. Dr. Robertson found that appellant could work without limitations.

In a work excuse note dated April 11, 2012, Dr. Robertson diagnosed right CMC joint osteoarthritis and right trigger thumb. He advised that appellant was under his care from April 4 to 7, 2012 and could resume work on April 9, 2012.

In a work excuse note dated June 6, 2013, Dr. Robertson indicated that he treated appellant from April 4 to 7, 2012. He found that appellant could return to work on April 9, 2012. Dr. Robertson related that appellant could not use his hand as a result of "[t]rauma from [an] injection and steroid." Dr. Robertson prescribed narcotic pain medication and advised appellant to "rest [his] hand for 3 days."

A time analysis form dated December 26, 2013 indicated that appellant used sick leave from April 5 to 7, 2012 due to an aggravation of right thumb arthritis.³

On April 23, 2014 appellant requested leave buyback for time lost from work from April 5 to 7, 2012 due to his accepted employment injury.

By letter dated April 30, 2014, OWCP advised appellant that the April 4, 2012 report and the April 11, 2012 and June 6, 2013 work excuse notes from Dr. Robertson were insufficient to show that appellant was disabled from April 5 to 7, 2012. It requested that he submit contemporaneous evidence from his physician addressing disability for the claimed period. No response was received.

³ In a report dated December 28, 2012, Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon and OWCP referral physician, diagnosed an aggravation of spinal stenosis primarily at L4-5, a disc protrusion at L5-S1, and facet arthropathy. He found that appellant was disabled from work beginning April 16, 2012.

By decision dated June 11, 2014, OWCP found that appellant had not established that he was disabled from April 5 to 7, 2012 as a result of his accepted employment injury. It found that he had not submitted rationalized medical evidence contemporaneous with the period of claimed disability explaining why he was unable to work.

On September 10, 2014 appellant requested reconsideration of the June 11, 2014 decision. He related that he could not use his hand from April 5 to 7, 2012 and took narcotic pain medication during this time. Appellant noted that he resumed work for one day on April 11, 2012 and then was off work for a year due to right thumb surgery.

In a note dated September 10, 2014, a supervisor from Dr. Robertson's medical office related that appellant telephoned the night of April 4, 2012 because he was experiencing "severe pain from the injection." The supervisor indicated that Dr. Robertson released appellant to his usual employment following the injection before learning of his reaction to the injection.

In a transcript of a telephone call dated April 4, 2012, received by OWCP on September 10, 2014, appellant advised that he had undergone an injection and was in considerable pain.

In an undated report, Dr. Robertson noted that he had evaluated appellant on September 7 and October 19, 2011, and April 4, May 16, and September 17, 2012. He diagnosed CMC arthritis and triggering of the right thumb. Dr. Robertson noted that appellant "underwent a steroid injection at the CMC joint which caused increased pain and did not improve symptoms." He attributed appellant's right thumb condition to work activities.

By decision dated December 4, 2014, OWCP denied modification of its June 11, 2014 decision. It determined that appellant had not submitted a rationalized report containing objective findings establishing that he was unable to perform any work from April 5 to 7, 2012.

On appeal appellant contends that he experienced pain after his steroid injection such that he was unable to work for three days. He contacted his physician the evening of the injection due to his pain and swelling and his physician took him off of work for three days.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁴ For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁶

⁴ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ See *Amelia S. Jefferson*, *id.*

⁶ See *Edward H. Horton*, 41 ECAB 301 (1989).

Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁸ An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.⁹ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wages.

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his disability and entitlement to compensation.¹⁰

ANALYSIS

OWCP accepted that appellant sustained an aggravation of lumbar degenerative disc disease, right lumbar radiculitis, a temporary aggravation of right thumb arthritis, and a temporary aggravation of right thumb trigger finger causally related to factors of his federal employment. Appellant filed a claim for wage-loss compensation from April 5 to 7, 2012. As noted above, he must submit medical evidence specifically addressing the claimed period of disability. Without this requirement, a claimant could effectively self-certify that he was disabled and entitled to compensation for a particular date or dates.¹¹

In a report dated April 4, 2012, Dr. Robertson diagnosed CMC arthritis and triggering of the right thumb. He injected appellant's right thumb with a steroid and released him to resume work without restrictions. Dr. Robertson did not find appellant disabled and thus the April 4, 2012 report does not support his claim for disability compensation.

In an April 11, 2012 work slip, Dr. Robertson diagnosed right CMC joint osteoarthritis and right trigger thumb. He advised that appellant was under his care from April 4 to 7, 2012 and could resume work on April 9, 2012. Dr. Robertson did not address the cause of appellant's disability and thus the report is of little probative value.¹²

⁷ *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004); 20 C.F.R. § 10.5(f).

⁸ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁹ *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *See William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *Id.*

¹² *See S.T.*, Docket No. 15-1362 (issued October 1, 2015); *Ellen L. Noble*, 55 ECAB 530 (2004).

In a June 6, 2013 report, Dr. Robertson noted that he treated appellant from April 4 to 7, 2012 and opined that he could resume work on April 9, 2012. He explained that appellant could not use his hand during this time and required narcotic pain management. Dr. Robertson did not, however, provide rationale for his opinion other than to note that appellant needed pain management. Medical conclusions unsupported by rationale are of diminished probative value.¹³ Such rationale is particularly important in this case, given that Dr. Robertson's opinion on appellant's ability to work from April 4 to 7, 2012 is not contemporaneous with the claimed period of disability.¹⁴

A supervisor from Dr. Robertson's office noted that appellant telephoned at night on April 4, 2012 complaining of significant pain after his injection. The supervisor related that Dr. Robertson did not know that he had reacted to the injection when he released appellant to return to his regular employment. Lay individuals, however, are not competent to render a medical opinion.¹⁵ The issue of causal relationship is a medical one and must be resolved by probative medical evidence.¹⁶

In an undated report, Dr. Robertson noted that he had evaluated appellant on multiple dates, including April 4, 2012. He diagnosed CMC arthritis and triggering of the right thumb. Dr. Robertson noted that appellant "underwent a steroid injection at the CMC joint which caused increased pain and did not improve symptoms." He attributed appellant's right thumb condition to work activities. Dr. Robertson, however, did not specifically address whether appellant could work from April 5 to 7, 2012 and thus his opinion is of little probative value.¹⁷

On appeal appellant maintains that he was unable to work after the steroid injection to his thumb due to pain and swelling. His physician advised that he should not work for three days. Appellant has the burden, however, to submit rationalized medical evidence which supports a causal relationship between the period of disability, and the accepted injury.¹⁸

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he was disabled from April 5 to 7, 2012 due to his accepted employment injuries.

¹³ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹⁴ Medical evidence contemporaneous to the injury or disability may be afforded greater probative value in the weight of medical evidence. *George Sevetas*, 43 ECAB 424 (1992).

¹⁵ *See B.H.*, Docket No. 15-0978 (issued October 22, 2015); *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹⁶ *Id.*

¹⁷ *See supra* note 12.

¹⁸ *See S.H.*, Docket No. 14-1574 (issued March 27, 2015).

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board